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These comments are submitted by Steven C. Wallace, Senior Safety Specialist, Special Programs Coordinator, and Thomas Terry, Industrial Relations Manager, on behalf of Roadway Express, Inc., 1077 Gorge Blvd., Akron, Ohio, 44310 in response to the FHWA Docket No. MC-96-6 proposals to amend the Safety Performance History of New Drivers (FMCSR 391.23 and 382.413) as published in the Federal Register on March 14, 1996.

ROADWAY EXPRESS, INC.

FHWA-97-2277-21

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FUS./NEGS. DIV.

ADMINISTRATION

Roadway Express is a general commodities motor carrier engaged in the handling and transporting of long haul, less-than-truckload (LTL) freight. Roadway Express is one of the largest common carriers of freight in the United States and serves virtually all commodities within the 50 states as well as points in Canada, Mexico, Puerto Rico, Europe, Japan, and the Pacific Rim countries through a network of nearly 500 terminals, consolidation centers and foreign agents.

In 1995, Roadway Express transported more than 15 million shipments totalling 8 million tons. Roadway Express employs over 11,000 D.O.T. Driver Qualified employees to facilitate the handling and transportation of these shipments. Roadway Express driving employees perform their duties from company designated positions consisting of Linehaul or "over-the-road" drivers, Pick-up and Delivery drivers, and facility Switching or Yard drivers.

Roadway Express appreciates the opportunity to comment on the proposed amendments to the FMCSR 391.23 and 382.413.

#### PROPOSED AMENDMENT TO FMCSR 391. 23

Reporting Hours of Service violations resulting in drivers being placed "out-of-service" for all past and current employees as proposed in this amendment places an undue burden on employers regardless of the size of their respective companies. For the largest carriers, of which Roadway Express is included, this burden is magnified in the establishment and maintenance of the administrative and record keeping systems which would be required to comply with such an amendment. The burden increases as the size of the carrier increases.

The effort in such an endeavour would also be duplicative of existing systems within Roadway Express and other large carriers designed to monitor drivers' Hours of Service availability both locally and centrally. Internal monitoring provides assurance that drivers have adequate hours to meet run time requirements of the routes to which they are dispatched. As a result, drivers placed "out-of-service" for Hours of Service violations are rare, nearly non-existent, even with the high volume of drivers which Roadway Express employs to meet its daily business needs. Establishing a reporting system on all driving employees which would yield little or no information is a waste of valuable resources. Those resources could be better dedicated to furthering the enhancement of safety skills within existing and new hire driver pools.

The Hours of Service violation itself may be a safety indicator, but of whom or which entity, the driver or the employer, it consistently measures remains questionable. As a result, prospective employers screening driver applicants have little means of determining if those violations reported to them are indicative of the driver's safety performance or that of the previous employer. A violation of the Hours of Service standards is not an indication of driving ability but an indication that the driver may have over extended the time in service, due to indeterminable reasons, for that specific occasion.

Further, the proposed requirement for determining if applicants have a past history involving D.O.T. recordable reportable accidents is not an indicator of a driver's safety performance. It clearly is an indicator of the driver's involvement in such an accident but it does not take into

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account what the circumstances were or whether the event itself was due to any fault or negligence on that driver's part.

#### **PROPOSED AMENDMENT TO FMCSR 382. 413**

In most instances, motor carriers may not be able to ascertain whether applicants with employment history in other transportation modes were regulated in the duties they performed in that mode. Any assurances received by the prospective employer from either the applicant or the previous employer(s) regarding the applicability of these regulations to duties performed by the applicant during such employment would have to be considered factual by the prospective employer. Having no knowledge of the regulatory requirements on specific job functions within other modes of transportation regarding the applicability of this rule leaves the prospective employer operating on good faith. Absent any regulatory provision(s) compelling previous employers, operating in other modes of transportation, to provide accurate information as required by this proposal, prospective employers would be at the mercy of the previous employer's good will.

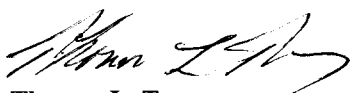
With regard to the requirement that information obtained from a previous employer must contain any alcohol and drug information derived from the previous employer, which itself may have been obtained from previous employers, we believe this to be ineffective as well as inefficient. Information obtained from previous employers which we would be required to pass on to prospective employers pertains to events or behaviors which were not observed or experienced by the company. Further, we would not have placed an individual on our driving payroll had they not met the requirements of an SAP directed rehabilitation program when warranted. As verification of previous employment is currently required in the regulatory provisions, previous employers should provide information concerning their experience with the prospective driver regarding substance abuse.

In most instances of violations of this rule, the individual is discharged and completion of a rehabilitation program as prescribed by a Substance Abuse Professional (SAP) is the responsibility of the individual. For most employers, job reinstatement is conditioned on successful completion of the prescribed rehabilitation program. Unless the individual completes rehabilitation and requests reinstatement, the previous discharging employer would be unable to determine whether that individual has failed to complete such a program.

Existing requirements which require employers to report positive substance abuse tests or the refusal to submit to substance abuse testing provide prospective employers with information regarding driver disqualification. It is then incumbent upon the prospective employer to secure, from the applicant, verification of completion of a SAP prescribed substance abuse rehabilitation program. Therefore it should be the joint responsibility of the applicant and the prospective employer to verify that the applicant meets the above noted criteria. The existing regulatory approaches are sufficient.



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